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ORIGINAL

January 3, 2006

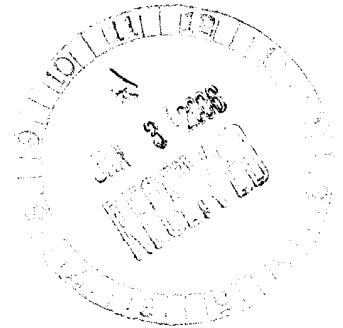
VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JAN 3 2006

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Public Record



Dear Secretary Williams:

Enclosed for filing in STB Finance Docket No. 34337, Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad, are the original and ten copies of the Opening Statement of Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc.

Three diskettes with the text of the Opening Statement are enclosed.

Additional copies of this letter and of the Opening Statement are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

Service has been North Coast Railroad Authority, d/b/a. Northwestern Pacific Railroad, by having served copies on its counsel, Christopher J. Neary, Esq., and William A. Mullins, Esq.

If you have any question concerning the foregoing or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Christopher J. Neary, Esq.
William A. Mullins, Esq..

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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY,
d/b/a NORTHWESTERN PACIFIC RAILROAD

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OPENING STATEMENT
OF
MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

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FOR CALIFORNIA WESTERN RAILROAD, INC.

Due and dated: January 3, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY,
d/b/a NORTHWESTERN PACIFIC RAILROAD

OPENING STATEMENT
OF
MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc.

("Trustee"), pursuant to the Decision of the Board, served November 23, 2005, states, as follows:

I.

INTRODUCTION

This is an action, pursuant to 49 U.S.C. 11704(b), seeking the recovery of damages by the Trustee for the Debtor railroad's loss of twenty-two months of net revenue from freight railway operations owing to years of failure by the Defendant, North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad, to maintain the right-of-way and the grade-crossing signals of its railroad line between Willits and Shellville, California, culminating in the shut-down of the line by order of the Federal Railroad Administration. The loss of service on the Defendant's line

rendered it impossible for the California Western Railroad, Inc., to continue to interline shipments of carloads of lumber at Willits for transportation by the Defendant to its connection with the California Northern Railroad at Shellville and the Union Pacific Railroad beyond. Despite repeated requests by the Chairman and President of the California Western Railroad, Inc., urgently asking the Defendant's Board of Directors and its contract operator, Rail-Ways, Inc., to restore the interchange at Willits and to rehabilitate the line to Shellville, they did nothing to alleviate the conditions found by the Federal Railroad Administration, and Defendant's line has lain dormant for seven years' time.

II.

STATEMENT OF THE FACTS

A.

NWP's degradation of its Russian River Line

Defendant, North Coast Railroad Authority ("NCRA"), pursuant to authority granted by the Board and its predecessor, the Interstate Commerce Commission ("ICC"), acquired the 286-mile line of railroad, know as the Northwestern Pacific Railroad ("NWP"), extending between Arcata and Shellville, California.¹ See the map of the Defendant's railroad line, Attachment A. Generally, the portion of the Defendant's railroad line north of Willits is referred to as the Eel River division, while the portion from Willits south is referred to as the Russian River division.

¹ STB Finance Docket No. 33115, North Coast Railroad Authority--Lease and Operation Exemption--California Northern Railroad Company, served September 27, 1996; Finance Docket No. 32788, North Coast Railroad Authority--Purchase Exemption--Southern Pacific Transportation Company, served March 20, 1996; Finance Docket No. 32052, North Coast Railroad Authority-- Acquisition and Operation Exemption--Eureka Southern Railroad, served April 23, 1992.

Both divisions were operated by NCRA, d/b/a NWP. See, The Official Railway Guide (November/December 1998).

It is the Russian River division (hereinafter referred to as the "Line") which is the focus of the Trustee's concern, because the California Western Railroad, Inc. ("CWR"), has only one connection with another railroad, and that was the one with the NWP at Willits. Accordingly, CWR's only means of access to the country's general system of railroads was via the Defendant's Line and the NWP's connection with the California Northern Railroad at Shellville and the Union Pacific Railroad Company beyond.

NWP has not rendered service on the Line in seven years' time. The Line has lain dormant since November 25, 1998, when the Administrator of the Federal Railroad Administration ("FRA") issued FRA Emergency Order No. 21, Notice No. 1, 63 Fed. Reg. 67976, December 9, 1998, effectively shutting down the Defendant's Line because of the risks which continued operation of the Line posed.

The issuance of FRA Emergency Order No. 21 did not come as a bolt out of the blue. It was the culmination of a series of reports of the defective conditions of the Defendant's Line submitted to NWP over the years by inspectors of the FRA and of the California Public Utilities Commission ("CPUC"). NWP's long continuing contempt for the FRA's safety regulations in failing adequately to maintain the Defendant's Line even to excepted track standards was noted in FRA Emergency Order No. 21:

In 1997, FRA, in partnership with the California Public Utilities Commission (CPUC) reviewed NWP's compliance with federal safety statutes and regulations on the portion of the line south of Willits. The review revealed widespread noncompliance similar to noncompliance that FRA and the CPUC previously had discovered on this line in the past several years. In conducting

numerous inspections of the NWP in the previous years, FRA and CPUC identified hundreds of defective track conditions, many of which became the basis for recommendations for civil penalty assessments against the railroad. The railroad frequently failed to make corrections even after defective conditions were identified by FRA or the CPUC

At a meeting of representatives of the NWP and its Board of Directors and representatives of FRA and CPUC on June 11, 1997, the group agreed to, and signed, a Safety Compliance Agreement, which, with respect to the track conditions of the Defendant's Line, merely required NWP, by an agreed date, to develop and furnish to FRA and the CPUC a track maintenance plan and to establish a program of employee training on the Federal Track Standards. There was nothing in FRA Emergency Order No. 21 to suggest that NWP had attributed the lack of funds or any other grounds for not abiding by the terms of the Compliance Agreement. Yet, one year after it had signed the Compliance Agreement, NWP had performed only three of the eleven action items which had been identified in the Compliance Agreement. As a result, on June 28, 1998, FRA issued a Compliance Order mandating the terms of the Compliance Agreement which previously had been reached with NWP.

In September and October, 1998, FRA reviewed NWP's observance of the Compliance Order and once again found that the railroad had disregarded the FRA's directives.

The railroad has failed to develop a track maintenance program, and it dropped its training of track inspection personnel after only two classes of a 24-class training program. Furthermore, the NWP has an inadequate number of employees who are qualified to inspect track

Additionally, FRA Emergency Order No. 21 noted that 32 of the NWP's 127 grade-crossing signals were not operational, several of them being located on Defendant's Line south of Willits.

FRA and CPUC inspectors also found that NWP employees generally lack the supervision, knowledge, test equipment, and supplies necessary to adequately

maintain the grade crossing signals. The railroad's two signal maintainers have no signal standards or instructions, nor are they knowledgeable about all necessary signal maintenance. They do not have proper test equipment, such as meters, meggers, relay testers, and shunts.

It well may be that a series of floods had caused washouts along the Eel River division of the NWP and seriously damaged segments of the NWP north of Willits.² The shut down of the Russian River division south of Willits, however, was the product of NWP's inept or indifferent management and the irresponsibility of its Board of Directors. Maintenance of the right-of-way of the Defendant's Line, which should have been performed as it routinely is on most every other of the Nation's short line railroads, was neglected by NWP, and the training and supervision of the railroad's maintenance-of-way personnel and its grade-crossing maintainers went unattended. NWP itself brought on the issuance of FRA Emergency Order No. 21; it had no one to blame but itself.

Defendant seeks to excuse its irresponsible conduct by claiming to have contracted with Rail-Ways, Inc., on May 12, 1998, to operate the Defendant's Line, and, indeed, FRA Emergency Order No. 21 noted that operations on the NWP at the time were being conducted under contract by Rail-Ways, Inc. That contract does not excuse the Defendant's conduct. Defendant remained the railroad authorized to operate the NWP, and Defendant, by the mere expediency of entering into an operating contract with Rail-Ways, Inc., cannot avoid the regulatory burdens it assumed when it acquired the NWP.³ Defendant was the railroad charged

² Defendant's estimate that the cost to repair the line is in the millions of dollars and will require overcoming environmental and wildlife hurdles, at page 12 of its Motion to Dismiss, filed January 28, 2005, pertains to the Eel River division.

³ See, STB Finance Docket No. 34551, Standard Terminal Railroad of New Jersey-Acquisition Exemption-Rail Line of Joseph C. Horner, served October 8, 2004; STB

with the responsibility for observing FRA's safety regulations, and it bore the ultimate responsibility for properly maintaining the railroad's right-of-way and grade-crossing signals. Indeed, 49 C.F.R. 213.5(d) specifically states that the Administrator of the FRA is authorized to hold the track owner responsible for complying with the Track Safety Standards notwithstanding that the track owner may have assigned responsibility for maintaining the track to another persons. That regulation is why FRA Emergency Order No. 21 ran against NWP and not Rail-Ways, Inc. Similarly, the Board should hold NWP responsible for the degradation of its Line as FRA did.

B.

NWP's failure to effect repairs of the Line

Following the service of FRA Emergency Order No. 21, NWP took no steps to reopen the interchange with CWR at Willits or to restore service on the Defendant's Line to Shellville.⁴ Yet, FRA Emergency Order No. 21 detailed the steps NWP could take to secure partial relief sufficient to be able it to resume operations on the Willits-to-Shellville Line, and the requirements were fairly modest: (1) adopt a set of grade crossing signal standards and instructions acceptable to FRA; (2) provide proper and adequate test equipment for signal maintainers; (3) furnish FRA with a 12-month track maintenance plan, including a schedule for the replacement of ties, the surfacing or replacement of track, clearance of drainage facilities and

Finance Docket No. 33995, SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL, served January 16, 2001.

⁴ Partial relief from FRA Emergency Order No. 21 was granted on May 28, 1999, to permit CWR's passenger excursion trains to turn around at Willits and on February 1, 2001, to permit NWP's operations between Lombard and Petaluma..

the control of vegetation; (4) establish a program of employee training on the Federal Track Standards; and (5) certify in writing that each individual conducting track inspection was qualified to do so.

NWP posted an embargo, Embargo 1-99, which expired December 3, 1999. See, AAR Embargoes Online.

An embargo, Embargo 1-01, also, was posted by Northwestern Pacific Railway Co., LLC ("NWPY"), and that embargo expired February 21, 2001. See, AAR Embargoes Online. NWPY had entered into an agreement with the Defendant for the lease of its Line, approved by Decision of the Board,⁵ but the lease agreement never was consummated,⁶ because NCRA failed to appropriate the funds for the rehabilitation of the Line, which was a condition of the lease. The Defendant, in its response to the Trustee's initial discovery requests, a copy of which is attached as Attachment B, acknowledged that "NCRA did not produce any invoices to NWPY for [lease] payments and NWPY made no [lease] payments to NCRA pursuant to said Agreement."

Neither NWP nor NWPY has sought the Board's authorization to discontinue rendering service on the Willits-to-Shellville Line or to abandon the Line, and yet the Line has not been operated in seven years' time. Certainly, none of the work called for by Emergency Order No. 21

⁵ See, STB Finance Docket No. 33998, Northwestern Pacific Railway Co., LLC-Lease and Operation Exemption-North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District, served February 6, 2001.

⁶ The Board's approval of the lease of the line was permissive and not mandatory. See, STB Finance Docket No. 34630 (Sub-No. 1), Dakota Southern Railway Company-Trackage Rights Exemption-State of South Dakota, et al., served December 29, 2004; STB Finance Docket No. 33905, Lackawanna County Railroad Authority-Acquisition Exemption-F&L Realty, Inc., served October 22, 2001.

to obtain partial relief from its terms which might have reopened the interchange at Willits and restored service on the Defendant's Line to Shellville has been undertaken in the interim. The interchange between CWR and NWP at Willits remains closed, and the Defendant's Line between Willits and Shellville continues to be inoperable

Attached as Attachment C, is the Verified Statement of Mr. John Mayfield, who was Chairman of the CWR at the time Emergency Order No. 21 was served and for some time thereafter. Mr. Mayfield, at page 2 of his Verified Statement, says:

I do not recall just when Rail-Ways, Inc., became the contract operator of the NWP, but I know full well that Rail-Ways, Inc., was the contract operator of the NWP at the time that the Federal Railroad Administration entered Emergency Order No. 21. I know that to be a fact, because I time and again spoke with Mr. John Darling, who was the head of Rail-Ways, Inc., about what he proposed to do to permit CWR again to move the Georgia-Pacific Corporation's lumber shipments.

Mr. Mayfield, at page 4-5 of his Verified Statement, concludes:

I had several conversations with Mr. Darling and the Board of Directors of the NWP about repairing the Willits-to-Shellville line sufficiently to permit the handling of the Georgia-Pacific lumber cars, but to no avail. The Fort Bragg lumber mill sought again to be able to ship its products by rail, and CWR was prepared to transport the carloads of the mill's lumber to Willits and to tender the traffic to the NWP. The Fort Bragg lumber mill was closed by Georgia-Pacific Corporation in September 2002, and I have no doubt its inability to ship by rail because of the disrepair of the NWP's Willits-to-Shellville line was a contributing factor.

In turn, CWR's loss of the Georgia-Pacific Corporation's lumber business contributed to its bankruptcy just a few months later, on December 3, 2002.

The testimony of Mr. Mayfield is corroborated by that of Mr. Gary D. Milliman, who served as the President and CEO of the CWR when FRA Emergency Order No. 21 was served and for some time thereafter. At page 2 of his Verified Statement, Mr. Milliman states:

Mr. Mayfield and I attended several Board meetings of the North Coast Railroad Authority ("NCRA") to advise them that GPC was hurting because of its inability to ship its lumber by rail, and CWR was hurting because we were unable to handle any freight shipments. We asked the NCRA Board to authorize the repair of the line and even offered to make CWR personnel available to assist with the maintenance of way work.

Mr. Milliman continues, at page 3 of his Verified Statement:

But neither Mr. Darling nor the NCRA Board responded to our repeated requests that the Willits-to-Shellville railroad line be repaired so that the GPC lumber again could be shipped by rail. We didn't think that the needed repairs were all that extensive - certainly nothing like what was required for the restoration of the Eel River segment north of Willits - and, from what we read in the newspapers, we had reason to believe that NCRA had received sufficient Federal disaster assistance and other state funds to permit the work to be performed.

The entreaties of Mr. Mayfield and Mr. Milliman were for naught. Nothing was done by NWP or its contract operator, Rail-Ways, Inc., to reestablish the interchange between the CWR and the NWP at Willits or to reopen the Defendant's Line between Willits and Shellville. The opportunities afforded by the embargoes were not utilized to achieve even partial compliance with FRA Emergency Order No. 21. No work performed to restore the interchange at Willits and to revive service on the Line to Shellville following the expiration of the embargoes. Rather, NWP elected to ignore the problems which caused the shut-down of the Line and, in the intervening seven years, did absolutely nothing to reopen the interchange at Willits and to again provide service on its Line between Willits and Shellville.

C.

The net revenue from freight railway operations lost by CWR

CWR had been constructed as a proprietary railroad line to serve a lumber mill at Fort Bragg. The line was used to haul logs to the mill and lumber from the mill to Willits for

interchange to the NWP and its transportation of the shipments to Shellville and the connection with the California Northern Railroad and the Union Pacific Railroad Company beyond. The lumber mill eventually was purchased by Georgia-Pacific Corporation, which established the CWR as a common carrier railroad, subject to the jurisdiction of the ICC.⁷

Attached as Attachment E is the Verified Statement of Rick Cecil, an executive of Kyle Railways, Inc. ("Kyle"), formerly a short line railroad holding company. Mr. Cecil explains that in July 1976, Kyle entered into an 18-month operating agreement to run the CWR for the Georgia-Pacific Corporation. Towards the end of its term, Kyle., through a subsidiary, Mendocino Coast Railway, Inc., entered into a lease, with option to purchase, the CWR.⁸ Mr. Cecil actually superintended the operations of the CWR for the first couple of years of Kyle's control of the railroad, and in his Verified Statement he declares, "We did a fairly substantial amount of freight business on the railroad at that time."

As I recall, we handled 20 to 30 carloads of lumber in three trains a week. At the time, we received about \$400 per car, and the gross revenue on the lumber shipments we hauled for Georgia-Pacific Corporation came to about \$1 to \$1.25 million annually.

Mr. Cecil, at page 2-3, concludes his Verified Statement, saying:

Unhappily, business declined on the railroad, and by the time Kyle Railways, Inc., sold the California Western to Mr. John Mayfield and his group of investors, pursuant to the Board's Decision in Finance Docket No. 33005, CWRR, Inc.-Acquisition and Operation Exemption-Mendocino Coast Railway, Inc., d/b/a California Western Railroad, served August 19, 1996, the railroad handled between 18 and 22 carloads of

⁷ See, Finance Docket No. 27442, Georgia Pacific Corporation-California Western Railroad, served October 4, 1973.

⁸ See, Finance Docket No. 28256, Mendocino Coast Railway, Inc.-Lease and Operate-California Western Railroad, served November 7, 1977, modified, December 8, 1977, August 18, 1978.

Georgia-Pacific lumber a week. The rate by then had been increased to about \$500 per car, and the gross revenue earned on the lumber shipments was about \$.5 million a year. We managed to keep our operating costs down on the California Western Railroad, and the Georgia-Pacific Corporation lumber shipments continued to be profitable.

The number of carloads of lumber shipped by Georgia-Pacific Corporation via CWR and NWP declined only slightly over the next couple of years. Attached as Attachment F is the Verified Statement of Mr. Robert Handegard, General Sales Manager - Western Lumber of the Georgia-Pacific Corporation. At page 1 of his Verified Statement, Mr. Handegard declares:

I was the Sales Manager of the Fort Bragg, California, lumber mill of the Georgia-Pacific Corporation at the time of the shut-down of the Northwestern Pacific Railroad.

I do not have any records of the business we then were doing, but, to the best of my recollection, we then were shipping approximately 700 carloads of lumber a year via the California Western Railroad.

Mr. Handegard's recollection of the number of carloads of lumber which Georgia-Pacific Corporation tendered for transportation by CWR and interchange to NWP at Willits squares with that of Mr. Mayfield. At page 2 of his Verified Statement, Mr. Mayfield states, "Before the shut-down of the NWP, it is my recollection that Georgia-Pacific Corporation on average tendered three carloads of lumber a day, or 60 carloads a month, for transportation by CWR." Mr. Mayfield concludes his Verified Statement, at page 5, saying:

As I already stated, before the November 25, 1998, shut-down of the NWP, we received on average 60 carloads of Georgia-Pacific Corporation lumber shipments. CWR's share of the revenue came to about \$500 per car. Thus, NWP's failure to maintain the interchange at Willits or to operate its Willits-to-Shellville line during the 22 months between December 3, 2000, which I am advised is the applicable statute of limitations date, and September 2002, when Georgia-Pacific Corporation shut its Fort Bragg lumber mill, cost CWR some \$660,00 of lost freight revenue. With an operating ratio of approximately 80, that represented a loss of \$132,000 net revenue. It is my understanding that that is the amount which the Trustee is seeking to recover as damages for the Defendant's

breach of its statutory obligations.

Mr. Milliman, at pages 3-4 of his Verified Statement, reached precisely the same conclusion:

The inability to interchange traffic at Willits and to have it moved over the Willits-to-Shellville line cost CWR dearly. Before the November 25, 1998, shut-down of the NWP, CWR on average received 60 carloads of Georgia-Pacific Corporation lumber shipments, and our share of the revenue came to about \$500 per car. Accordingly, during the 22 months between December 3, 2000, which I am advised is the applicable statute of limitation date, and September 2002, when Georgia-Pacific Corporation shut its Fort Bragg lumber mill, denied CWR some \$660,000 of lost freight revenue. We then enjoyed an operating ratio of approximately 80, meaning that CWR sustained a loss of \$132,000 of net operating revenue. I understand that that is the amount which the Trustee is seeking to recover as damages for Defendant's breach of its statutory obligations.

The December 3, 2000, statute of limitation date was reference by Mr. Mayfield and Mr. Milliman, because the Trustee's Complaint was not filed with the Board until December 1, 2004. Ordinarily section-11704(b) damage actions, pursuant to 49 U.S.C. 11705(c) must be brought within two years after the claim accrues. Section 108(a) of the Bankruptcy Code, 11 U.S.C. 108(a), however, extends the statute of limitations two years so as to include any claims which are not time barred as of the date of the filing of the bankruptcy petition so long as the debtor's or trustee's complaint for damages is filed within two years of the date of the filing of the bankruptcy petition.⁹

The loss of \$132,000 of lost net revenue from CWR's freight operations which Mr. Mayfield and Mr. Milliman cite in their Verified Statements is not the profit CWR might have earned in handling the Georgia-Pacific Corporation's lumber shipments during those twenty-two

⁹ See, b. J. McAdams, Inc. F. Sugar foods Corporation, 171 B.R. 12 (Bankr. S.D. N.Y. 1994); North Penn Transfer, Inc. v. Victaulic Company, 859 F. Supp. 154, 164 (E.D. Pa. 1994); Motor Carrier Audit and Collection Company v. Lighting Products, Inc., 113 B.R. 424 (Bankr. N.D. Ill. 1989).

months in question. That amount was the difference between the CWR's freight railway operating revenue and its freight railway operating expense. In the Board's Uniform Systems of Accounts it would be referred to as net revenue from freight railway operations.

III.

ARGUMENT

A.

Trustee's standing to recover damages

49 U.S.C. 11704(b) states, "A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part." CWR is such a person,¹⁰ provided, of course, that it can establish that it was damaged as a result of NWP's breach of its statutory obligations. Since CWR is in bankruptcy, its Trustee is charged with the obligation of marshaling and preserving the assets of the railroad.¹¹ The Trustee properly filed the Complaint herein.

B.

Defendant's failure to provide service

A railroad's obligation to provide service is set forth at 49 U.S.C. 11101(a), which, in part, provides, "A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request."

¹⁰ See, Greyhound Lines, Inc. v. Monroe Bus Corp., 309 F. Supp.2d 104 (D. D.C. 2004); Erie Lackawanna Ry. Co. v. Penn Central Co., 338 I.C.C. 513, 544 (1969); Western Pacific R.R. Co. v. S.P. Co., 55 I.C.C. 71, 82 (1919).

¹¹ See, 11 U.S.C. 1106; Bennett v. Williams, 892 F.2d 822, 823 (9th Cir. 1989).

Following the service of FRA Emergency Order No. 21, CWR made timely requests of the Defendant to restore the interchange at Willits and to rehabilitate the Line to Shellville so as to permit CWR to participate in the movement of Georgia-Pacific Corporation's lumber shipments.

Mr. Mayfield, at page 4 of his Verified Statement, says:

The personnel of the Fort Bragg lumber mill of Georgia-Pacific Corporation were concerned that Rail-Ways, Inc. [Defendant's contract operator], had allowed the Willits-to-Shellville line to deteriorate to the point that it was shut down by the Federal Railroad Administration's Emergency Order No. 21. It left the lumber mill with no alternative to ship all of its output by truck, at appreciably greater expense, rendering its lumber less competitive in the Midwest marketplace. They kept after CWR to try to get service restored on the NWP, and, we, in turn, requested resumption of service.

Mr. Milligan, at page 2 of his Verified Statement, confirms Mr. Mayfield's recollection:

Mr. Mayfield and I attended several Board meetings of the North Coast Railroad Authority ("NCRA") to advise them that GPC was hurting because of its inability to ship its lumber by rail, and CWR was hurting because we were unable to handle any freight shipments. We asked the NCRA Board to authorize the repair of the line and even offered to make CWR personnel available to assist with the maintenance of way work.

Clearly, CWR made a reasonable request for service, thus triggering Defendant's common carrier obligation.

To be sure, NWP posted an embargo shortly following the service of FRA Emergency Order No. 21. It, however, expired after a year's time, on December 3, 1999, without any work having been performed to alleviate the conditions which occasioned the entry of the order. Shortly after NWP's embargo had expired, NWPY posted an embargo; but it, too, expired after a year's time, on February 21, 2001, without any steps having been taken by NWP or anyone else to remedy the defects on the Willits-to-Shellville Line which prompted the service of FRA Emergency Order No. 21. In STB Docket No. 42087, Groome & Associates, Inc. and Lee K.

Groome v. Greenville County Economic Development Corporation, served July 27, 2005, the

Board said:

Even where the proper embargo procedures are followed, a carrier may be found to be in violation of the common carrier obligation if the embargo is premised on damage that can be readily and inexpensively fixed, or if the embargo remains in effect too long. Indeed, an embargo that extends beyond a reasonable time can be construed as an unlawful abandonment; that is why we require that, at some point, if a carrier is not going to fix a line over which service is required, it must take steps to obtain abandonment or discontinuance authority [citations omitted].

As already noted, Defendant did not avail itself of the opportunity which NWP and NWPY's embargoes afforded to remedy the defects which FRA had noted in FRA Emergency Order No. 21 and thereby to restore the connection between CWR and NWP at Willits and to rehabilitate the Defendant's Line between Willits and Shellville. The Defendant did not even seek the Board's authorization to discontinue rendering service on the Line or to abandon it. The Line simply has lain fallow for seven years' time. The question before the Board is whether Defendant's indifference was reasonable. As the Board said in its Groome & Associates decision, id.,

In considering whether a failure to serve is reasonable, as well as how long the failure to serve may reasonably continue, the Board balances the following factors: the cost of repairs necessary to restore service, the amount of traffic on the line, the carrier's intent, the length of the service cessation, and the financial condition of the carrier. We do not apply these factors in a formulaic way. Rather, our objective is to determine whether the carrier's actions, including its failure to serve, are reasonable under the circumstances [citations omitted].¹²

Each of the considered factors militates against the Defendant. An examination of each leads to

¹² Accord, Bar Ale, Inc. v California Northern Railroad Co. And Southern Pacific Transportation Company, served July 20, 2001; STB Finance Docket No. 33386, Decatur County Commissioners v. Central Railroad Company of Indiana, served September 29, 2000, aff'd sub nom., Decatur County Commissioners v. Surface Transportation Board, 308 F.3d 710, (7th Cir. 2002).

inevitable conclusion that, if the Defendant had elected to do so, it could have restored the interchange at Willits and resumed operation of its Line between Willits and Shellville.

C.

The cost of repairs necessary to restore service

The shut-down of the Line between Willits and Shellville was the product of several years of neglect on the part of the Defendant in failing to maintain the right-of-way and to repair the grade-crossing signals. FRA Emergency Order No. 21, however, did not call for draconian measures to secure partial relief from the Order so as to permit the restoration of the interchange between CWR and NWR at Willits and the resumption of service on the Line between Willits and Shellville. Largely, the Order merely called for Defendant to outline a program for the undertakings it planned to assume to satisfy the concerns of FRA, namely (1) adopt a set of trade crossing signal standards and instructions acceptable to FRA; (2) provide proper and adequate test equipment for signal maintainers; (3) furnish FRA with a 12-month track maintenance plan, including a schedule for the replacement of ties, the surfacing or replacement of track, clearance of drainage facilities and the control of vegetation; (4) establish a program of employee training on the Federal Track Standards; and (5) certify in writing that each individual conducting track inspection was qualified to do so.

The Trustee has no idea what the cost of securing partial relief from FRA Emergency Order No. 21 to restore the interchange at Willits and to resume operations on the Line to Shellville would be but estimates that it cannot be more than \$100,000.00. The Trustee, in Document Production Request No. 4, asked the Defendant to produce, among other things, "reports submitted to the Board of NCRA by NCRA executives or employees, Rail-Ways, Inc.,

third-party contractors or by any other person and any other documents relating to the condition of the Line, the track and signaling work required to maintain or rehabilitate the Line to meet Federal Railroad Administration minimum standards and the cost of such work during the relevant time.” The Defendant produced none of the requested documents, but simply responded stating that the minutes of the NCRA’s Board meetings would be made available for inspection and copying at its headquarters in Ukiah, CA. See, Attachment B.

The minutes of the NCRA Board meeting of November 18, 1998, which was shortly before FRA Emergency Order No. 21 was served, said, “To comply with FRA, costs could be \$90,000 to \$100,000.” See, Attachment G.

D.

The amount of traffic on the Line

Mr. John A. Darling, President and CEO of NWP’s contract operator Rail-Ways, Inc., advised the U.S. Railroad Retirement Board that the 170.5-mile Line between Willits and Shellville handled approximately 350 carloads of freight each month. See, Attachment H. That comes to 4,200 carloads annually. Defendant, in its response to Interrogatory No. 3, said that the traffic on the line was even greater, “As a matter of summary, the carloads moved from January 1, 1997 through November 30, 1997 were 5,511 carloads, and freight income through October 31, 1997, was \$1.4 million.” See, Attachment B.

E.

Defendant’s intent

The Trustee has no means of gauging Defendant’s intent. Defendant’s failure to adopt any measures to reopen the interchange at Willits and to restore service on its Line to Shellville,

however, are strong and irrefutable indications that Defendant's intent has been to cease operating the Willits-to Shellville Line without having secured the Board's discontinuance authorization.

F.

The length of service cessation

No service has been rendered on the Willits-to-Shellville Line in the seven years since FRA Emergency Order No. 21 was served on November 25, 1998.

G.

The financial condition of the carrier

The minutes of the meeting of the NCRA's Board of Directors of November 18, 1998, held shortly before FRA Emergency Order No. 21 was served, notes that the NCRA's Board of Directors had \$1,000,000 to disburse. See, Attachment G. The Board of Directors chose to make that money available to unidentified North Coast contractors rather than expending even a portion of that sum on the deferred maintenance and inoperative grade-crossing signals on the Willits-to-Shellville Line. As the Defendant acknowledged in responding to Interrogatory No. 5, "In the years 1999 and 2000, NCRA expended significant funds for maintenance and rehabilitation of the line which resulted in partial relief from FRA Emergency Order No. 21." See, Attachment B. Service may have been restored between Lombard and Petaluma, but that didn't do a thing for the Willits-to-Shellville Line.

H.

The relief the Trustee seeks

The foregoing factors unequivocally demonstrate the unreasonableness of the Defendant

in not reopening the interchange at Willits and rehabilitating the right-of-way and repairing the grade-crossing signals of the Line to Shellville so as to permit the resumption of service promptly following the service of FRA Emergency Order No. 21. Not that much effort needed to be expended for NWP to have secured partial relief from the Order, and, at the time, NCRA's Board of Directors had the funds to undertake whatever work needed to be performed to satisfy FRA's requirements. The Board, accordingly, should find that Defendant has breached its statutory duty under 49 U.S.C. 11101(a).¹³

The Trustee does not seek to be awarded as damages the profit which CWR lost as a result of Defendant's intransigence. Although the Board may and has awarded lost profits pursuant to section 11704(b),¹⁴ the Trustee is aware that the Board is reluctant to do so, because it deems lost profits to be too speculative.¹⁵

There, however, is nothing speculative about lost net revenue from freight railway operations.¹⁶ In the twenty-two months, between December 3, 2000, the earliest date from which the Trustee can seek damages, until September 2002, when CWR's shipper, Georgia-Pacific

¹³ See, STB Finance Docket No. 33989, Pejeboscot Industrial Park, Inc., d/b/a Grimmell Industries—Petition for Declaratory Order, served May 15, 2003; Overbrook Farmers Union—Petition for Declaratory Order, 5 I.C.C.2d 316 (1989); Interstate Commerce Commission, et al. v. Baltimore and Annapolis R. Co., et al., 398 F. Supp. 454, 466-67 (D. Md. 1975), aff'd, 537 F.2d 77 (4th Cir. 1976).

¹⁴ See, GS Roofing Products v. Surface Transp. Bd., 262 F.3d 767, 778 (8th Cir. 2001); Overbrook Farmers Union Coop. Assn. v. Missouri Pacific R. Co., 21 F.3d 360, 362 (10th Cir. 1994); Louisiana Railcar, Inc. v. Missouri Pacific Railroad Co., 5 I.C.C. 542, 549 (1989).

¹⁵ See, STB Docket No. 42087, Groome & Associates, Inc. and Lee K. Groome v. Greenville County Economic Development Corporation, served July 27, 2005

¹⁶ See, 49 C.F.R. part 1201.

3. "NCRA" means the Defendant, its current and former chairmen, members, officers, employees, agents, or attorneys, any person controlling, controlled by, or under common control with it; any person acting on behalf of it or any of its subsidiaries, affiliates, divisions or predecessors-in-interest; and any entities in which any of the aforesaid hold or held any degree of interest from January 1, 1997, through December 3, 2002..

4. "Rail-Ways, Inc." means the company by that name, its current and former chairmen, members, officers, employees, agents, or attorneys, any person controlling, controlled by, or under common control with it, any person acting on behalf of it or any of its subsidiaries, affiliates, divisions or predecessors-in-interest; and any entities in which any of the aforesaid hold or held any degree of interest from January 1, 1997, through December 3, 2002..

5. "NWPY" means Northwestern Pacific Railway Company, LTD, its current and former chairmen, members, officers, employees, agents, or attorneys, any person controlling, controlled by or under common control with it, any person acting on behalf of it or any of its subsidiaries, affiliates, divisions or predecessors-in-interest; and any entities in which any of the aforesaid hold or held any degree of interest from January 1, 1997, through December 3, 2002..

6. "Document" means and includes any printed, typewritten or handwritten material or writing of whatever kind or nature, including, but not limited to, letters, correspondence, memoranda, notes, studies, desk or other calendars, statements, telegrams, ledgers, journals, balance sheets, income and expense statements, financial statements, personal records, account statements, bank statements, minutes and notes of meetings or conversations, computer print-outs, computer listings, agreements, contracts, drafts, negotiable instruments, checks, receipts, invoices, bills, bills of lading, tariffs, shipping receipts, purchase orders, exhibits to agreements, rough drafts of documents, catalogues, transcripts, photographs, photostats, pictures, all originals in carbon or photostatic copies or other duplicates of any such document referred to above, including microfilm, microfiche, computer hard drives, computer memories, computer tapes, computer discs or electronically stored documents, and any other documents or writings as such terms are understood

in their ordinary sense.

7. "Person" or "persons" as used herein refers to any natural person, corporation, partnership, proprietorship, association, joint venture, governmental or other public entity, or any other form of organization or legal entity, including carrier rate bureaus, and all their officials, officers, employees, representatives and agents.

8. As used herein, "officials," "officers," "employee," "representative," or "agent" includes any natural or corporate person, including attorneys, serving, acting or being in such capacity (by contract or otherwise) at any relevant time even though such person is no longer in such capacity.

9. The term "identify" when used herein with reference to a document or an oral communication or statement means:

(a) If an oral communication or statement, identify the type of communication or statement, state the place(s) where the communication or statement was issued or received, the author or speaker and date thereof, identify all witnesses to the communication or statement, and identify the subject matter and content of the communication or statement.

(b) If a document, state its title or other identifying data, and (1) the kind of documents; (2) number of pages; (3) present location and custodian; (4) the date it bears; (5) the date prepared; (6) whether the document was sent and, if so, the date it was sent; and (7) the identity of the author, originator, sender, each person who received the document, and each person known to have the document.

10. The term "identify" when used herein with reference to a fact or circumstance, means:

(a) To identify, as defined above in paragraph 6, any occasion and occurrence, oral communication or document, and to describe precisely and fully any other circumstance or manifestation of facts which, in whole or in part, led to or is believed in any way to support a particular allegation, whether or not admissible into evidence or intended to be offered into evidence.

(b) To set forth fully and precisely any inference, construction, interpretation, relation, opinion or contention that relates to the fact or circumstance, or to the application of law to the fact or circumstance, and which in whole or in part led to or is believed in any way to support a particular allegation.

11. The term "identify", when used herein with respect to a natural person means to state:

in their ordinary sense.

7. "Person" or "persons" as used herein refers to any natural person, corporation, partnership, proprietorship, association, joint venture, governmental or other public entity, or any other form of organization or legal entity, including carrier rate bureaus, and all their officials, officers, employees, representatives and agents.

8. As used herein, "officials," "officers," "employee," "representative," or "agent" includes any natural or corporate person, including attorneys, serving, acting or being in such capacity (by contract or otherwise) at any relevant time even though such person is no longer in such capacity.

9. The term "identify" when used herein with reference to a document or an oral communication or statement means:

(a) If an oral communication or statement, identify the type of communication or statement, state the place(s) where the communication or statement was issued or received, the author or speaker and date thereof, identify all witnesses to the communication or statement, and identify the subject matter and content of the communication or statement.

(b) If a document, state its title or other identifying data, and (1) the kind of documents; (2) number of pages; (3) present location and custodian; (4) the date it bears; (5) the date prepared; (6) whether the document was sent and, if so, the date it was sent; and (7) the identity of the author, originator, sender, each person who received the document, and each person known to have the document.

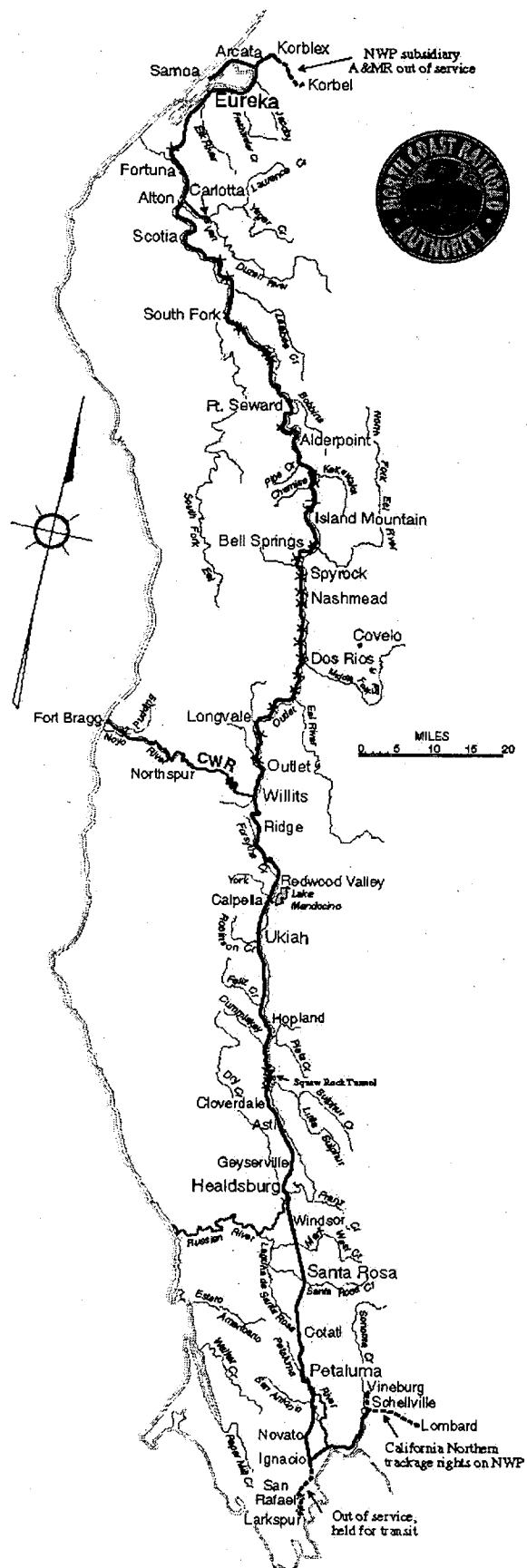
10. The term "identify" when used herein with reference to a fact or circumstance, means:

(a) To identify, as defined above in paragraph 6, any occasion and occurrence, oral communication or document, and to describe precisely and fully any other circumstance or manifestation of facts which, in whole or in part, led to or is believed in any way to support a particular allegation, whether or not admissible into evidence or intended to be offered into evidence.

(b) To set forth fully and precisely any inference, construction, interpretation, relation, opinion or contention that relates to the fact or circumstance, or to the application of law to the fact or circumstance, and which in whole or in part led to or is believed in any way to support a particular allegation.

11. The term "identify", when used herein with respect to a natural person means to state:

ATTACHMENT A



ATTACHMENT B

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY
FOR CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY,
d/b/a NORTHWESTERN PACIFIC RAILROAD

COMPLAINANT'S FIRST SET OF INTERROGATORIES
AND DOCUMENT PRODUCTION REQUESTS

Complainant, Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc., pursuant to 49 C.F.R. 1114.1, et seq., respectfully submit the following interrogatories and document production requests to Defendant to be answered within fifteen (15) days of the date of service and asks that whatever documents are produced in response to any of the requests be made available for inspection and copying at the offices of Complainant's counsel, Fritz R. Kahn, Esq., Fritz R. Kahn, P.C., 1920 N Street, NW (8th fl.), Washington, DC 20036..

I.

DEFINITIONS AND INSTRUCTIONS

1. "Complaint" means the Complaint in the instant proceeding, filed December 1, 2004.
2. "CWR" means California Western Railroad, Inc., its predecessor companies, its current and former officers, directors, employees, agents, or attorneys; any person controlling, controlled by, or under common control with it, any person acting on behalf of it or any of its subsidiaries, affiliates, divisions or predecessors-in-interest; and any commercial entities in which any of the aforesaid hold or held any degree of ownership interest from January 1, 1997, through December 3, 2002.

3. "NCRA" means the Defendant, its current and former chairmen, members, officers, employees, agents, or attorneys, any person controlling, controlled by, or under common control with it; any person acting on behalf of it or any of its subsidiaries, affiliates, divisions or predecessors-in-interest; and any entities in which any of the aforesaid hold or held any degree of interest from January 1, 1997, through December 3, 2002..

4. "Rail-Ways, Inc." means the company by that name, its current and former chairmen, members, officers, employees, agents, or attorneys, any person controlling, controlled by, or under common control with it, any person acting on behalf of it or any of its subsidiaries, affiliates, divisions or predecessors-in-interest; and any entities in which any of the aforesaid hold or held any degree of interest from January 1, 1997, through December 3, 2002..

5. "NWPY" means Northwestern Pacific Railway Company, LTD, its current and former chairmen, members, officers, employees, agents, or attorneys, any person controlling, controlled by or under common control with it, any person acting on behalf of it or any of its subsidiaries, affiliates, divisions or predecessors-in-interest; and any entities in which any of the aforesaid hold or held any degree of interest from January 1, 1997, through December 3, 2002..

6. "Document" means and includes any printed, typewritten or handwritten material or writing of whatever kind or nature, including, but not limited to, letters, correspondence, memoranda, notes, studies, desk or other calendars, statements, telegrams, ledgers, journals, balance sheets, income and expense statements, financial statements, personal records, account statements, bank statements, minutes and notes of meetings or conversations, computer print-outs, computer listings, agreements, contracts, drafts, negotiable instruments, checks, receipts, invoices, bills, bills of lading, tariffs, shipping receipts, purchase orders, exhibits to agreements, rough drafts of documents, catalogues, transcripts, photographs, photostats, pictures, all originals in carbon or photostatic copies or other duplicates of any such document referred to above, including microfilm, microfiche, computer hard drives, computer memories, computer tapes, computer discs or electronically stored documents, and any other documents or writings as such terms are understood

in their ordinary sense.

7. "Person" or "persons" as used herein refers to any natural person, corporation, partnership, proprietorship, association, joint venture, governmental or other public entity, or any other form of organization or legal entity, including carrier rate bureaus, and all their officials, officers, employees, representatives and agents.

8. As used herein, "officials," "officers," "employee," "representative," or "agent" includes any natural or corporate person, including attorneys, serving, acting or being in such capacity (by contract or otherwise) at any relevant time even though such person is no longer in such capacity.

9. The term "identify" when used herein with reference to a document or an oral communication or statement means:

(a) If an oral communication or statement, identify the type of communication or statement, state the place(s) where the communication or statement was issued or received, the author or speaker and date thereof, identify all witnesses to the communication or statement, and identify the subject matter and content of the communication or statement.

(b) If a document, state its title or other identifying data, and (1) the kind of documents; (2) number of pages; (3) present location and custodian; (4) the date it bears; (5) the date prepared; (6) whether the document was sent and, if so, the date it was sent; and (7) the identity of the author, originator, sender, each person who received the document, and each person known to have the document.

10. The term "identify" when used herein with reference to a fact or circumstance, means:

(a) To identify, as defined above in paragraph 6, any occasion and occurrence, oral communication or document, and to describe precisely and fully any other circumstance or manifestation of facts which, in whole or in part, led to or is believed in any way to support a particular allegation, whether or not admissible into evidence or intended to be offered into evidence.

(b) To set forth fully and precisely any inference, construction, interpretation, relation, opinion or contention that relates to the fact or circumstance, or to the application of law to the fact or circumstance, and which in whole or in part led to or is believed in any way to support a particular allegation.

11. The term "identify", when used herein with respect to a natural person means to state:

- (a) the full name;
- (b) the last known residence;
- (c) the last known employer or business affiliation and address;
- (d) the last known occupation and business position or title held; and
- (e) a phone number at which said person may be contacted.

12. In order to bring within the scope of these interrogatories and document production requests all conceivably relevant matters or documents which might otherwise be construed to be outside their scope:

- (a) The singular of each word shall be construed to include its plural and vice versa.
- (b) "And" as well as "or" shall be construed conjunctively as well as disjunctively.
- (c) "Each" shall be construed to include "every" and vice versa.
- (d) The present tense shall be construed to include the past tense and vice versa.
- (e) The masculine shall be construed to include the feminine and vice versa.

13. If Defendant believed that any of the following interrogatories or document production requests calls for assertion of a claim of privilege, answer that part of the interrogatory which is not objected to, state that part of each interrogatory as to which Defendant raises objection, and set forth the basis for Defendant's claim of privilege with respect to such response as Defendant refuses to make.

14. If, for reasons other than a claim of privilege, Defendant refuse to respond to answer any interrogatory or document production request, please state the grounds upon which the refusal is based, whether there are documents in existence responsive to the interrogatory or document production request and a description of the document.

15. If any information called for by these interrogatories is not available or accessible in the full detail requested, such interrogatories shall be deemed to call for sufficient explanation of the reasons therefor, as well as for the best information available or accessible, set forth in as detailed

a manner as possible.

16. Each of these definitions and instructions shall be fully applicable to each interrogatory and document production request, notwithstanding that a definition or instruction above may in whole or in part be reiterated in a particular interrogatory or document production request, or a particular interrogatory or document production request may incorporate supplemental instructions or definitions.

17. The term "relevant time" as used in these interrogatories is from January 1, 1997, through December 3, 2002..

18. The abbreviation "STB" as used in these interrogatories and document production requests refers to the Surface Transportation Board, Washington, DC 20423.

19. "Line" as used in these interrogatories and document production requests refers to the railroad line between Willits, CA, and Shellville, CA.

20. Please note that, pursuant to 49 C.F.R. 1124.26, whenever the answer to an interrogatory may be derived or ascertained from Defendant's business records, it may elect to furnish a copy of the document or documents or arrange with Complainant's counsel for their inspection and copying.

21. Please note, as well, that, pursuant to 49 C.F.R. 1114.29, Defendant's obligation to respond to these interrogatories and document production requests is a continuing one, and it must supplement its responses to keep them current and correct.

INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

Interrogatory No. 1. When did NCRA first engage Rail-Ways, Inc., to be the contract operator of its railroad lines or any part of them?

Document Production Request No. 1. Produce a copy of the initial contract between NCRA and Rail-Ways, Inc., copies of each renewal, revision or amendment thereof, copies of invoices submitted by Rail-Ways, Inc., or cancelled checks of NCRA for payments made to Rail Ways, Inc.,

for its contract operations and any other documents relating to the contract operator relationship between NCRA and Rail-Ways, Inc, during the relevant time.

Interrogatory No. 2. When did NCRA first lease its railroad lines or any part of them to NWPY?

Document Production Request No. 2. Produce a copy of the initial lease by NWPY of all or part of NCRA's railroad lines, copies of each renewal, revision or amendment thereof, copies of invoices submitted by NCRA or cancelled checks of NWPY for payments made by NWPY to NCRA for the lease of the NCRA railroad lines and any other documents relating to the lessor/lessee relationship between NCRA and NWPY during the relevant time.

Interrogatory No. 3. How many revenue carloads of freight moved on the Line in 1997 and what was the gross freight revenue received, whether by NCRA or Rail-Ways, Inc.

Document Production Request No. 3. Produce copies of all bills of lading, freightbills, waybills, invoices, interline settlement accounts and any other documents relating to the freight handled on the Line and the revenue received by NCRA or Rail-Ways, Inc., in 1997.

Interrogatory No. 4. During the relevant time, was NCRA kept apprised of the condition of the Line, the track and signaling work required to maintain or rehabilitate the Line to meet Federal Railroad Administration minimum standards and cost of such work.

Document Production Request No. 4. Produce copies of the minutes of the meetings of the Board of NCRA, reports submitted to the Board of NCRA by NCRA executives or employees, Rail-Ways, Inc., third-party contractors or by any other person and any other documents relating to the condition of the Line, the track and signaling work required to maintain or rehabilitate the Line to meet Federal Railroad Administration minimum standards and the cost of such work during the relevant time.

Interrogatory No. 5. Did NCRA have sufficient funds to pay for the maintenance or rehabilitation of the Line to meet Federal Railroad minimum standards, if its Board had elected to authorize such expenditures during the relevant time?

Document Production Request No. 5. Produce copies of the budgets, income statements and/or other financial statements of NCRA for each of the annual or fiscal years during the relevant time.

Dated at Washington, DC, this 5th day of December 2005.

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY
FOR CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY,
d/b/a NORTHWESTERN PACIFIC RAILROAD

DEFENDANT'S RESPONSES TO FIRST SET OF
INTERROGATORIES AND DOCUMENT PRODUCTION REQUESTS

Defendant, North Coast Railroad Authority, a Public Agency ("NCRA") has not completed its investigation of the facts in this case and has yet to complete discovery in this matter. NCRA therefore expressly reserves its right to amend or supplement these responses at any later time pursuant to any information that is discovered or recovered after the date of these responses.

Interrogatory No. 1. NCRA contracted with Rail-Ways, Inc. as the contract operator of its railroad lines or any part of them by agreement dated May 12, 1998.

Document Production Request No. 1. Said document, which is a business record of NCRA, will be made available for inspection and copying at the office of Christopher J. Neary, 110 S. Main St., Ste. C, Willits, CA 95490 pursuant to prior arrangements with Complainant's counsel.

Interrogatory No. 2. NCRA first leased its railroad lines or any part of them to NWPY on January 1, 2000.

Document Production Request No. 2. NCRA will produce a copy of the initial lease with NWPY dated January 1, 2000. The Agreement was amended on January 1, 2001. NCRA will produce the amendment dated January 1, 2001. Such documents are business records of NCRA and will be made available for inspection and copying at the office of Christopher J. Neary, 110 S. Main St., Ste. C, Willits, CA 95490 pursuant to prior arrangements with Complainant's counsel.

NCRA did not produce any invoices to NWPY for payments and NWPY made no payments to NCRA pursuant to said Agreement. NCRA objects to the Document Production Request for "any other documents relating to the lessor-lessee relationship between NCRA and NWPY during the relevant time" as being vague and incapable of response.

Interrogatory No. 3. The amount of carloads and freight moved on the line in 1997 and gross revenue received are set forth in NCRA's business records. As a matter of summary, the carloads moved from January 1, 1997 through November 30, 1997 were 5,511 carloads, and freight income through October 31, 1997 was \$1.4 million. The business records will disclose more complete and accurate information.

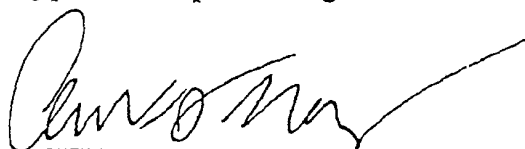
Document Production Request No. 3. NCRA will produce copies of all bills of lading, freight bills, weigh bills, invoices, interline settlement accounts and other documents relating to freight handled on the line and revenue received by NCRA in 1997. These records are voluminous and are business records of NCRA. These records are located at the Eureka Depot, 4 West 2nd Street, Eureka, California 95501 and will be made available for inspection and copying pursuant to prior arrangements with Complainant's counsel.

Interrogatory No. 4. NCRA was kept apprised of the condition of the line, track and signaling work required to maintain and rehabilitate the line and the cost of such work at various times.

Document Production Request No. 4. NCRA maintains minutes of its meetings of the Board of Directors and agenda packets as a business record, which are located at 419 Talmage Road, Ste. M, Ukiah, California 95482, and which will be made available for inspection and copying pursuant to prior arrangements with Complainant's counsel.

Interrogatory No. 5. NCRA objects to Interrogatory No. 5 to the extent it is vague. Without waiving the foregoing objection, NCRA states that between January 1, 1997 and November 27, 1997, NCRA expended funds for maintenance and rehabilitation of the line to meet Federal Railroad minimum standards. In the years 1999 and 2000, NCRA expended significant funds for maintenance and rehabilitation of the line which resulted in partial relief from FRA Emergency Order No. 21. From and after February 1, 2001, NCRA did not have sufficient funds to pay for maintenance or rehabilitation of the line to meet Federal Railroad minimum standards, although during such time, NCRA made significant expenditures for maintenance and rehabilitation.

Document Production Request No. 5. NCRA will produce copies of budgets, income statements and other financial statements of NCRA for the relevant time. Such documents are business records and are located at 419 Talmage Road, Ste. M, Ukiah, California 95482 and will be made available for inspection and copying pursuant to prior arrangements with Complainant's counsel.



CHRISTOPHER J. NEARY
110 S. Main St., Ste. C
Willits, CA 95490
Tel: (707) 459-5551

ATTACHMENT C

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY
d/b/a NORTHWESTERN PACIFIC RAILROAD

VERIFIED STATEMENT
OF
JOHN MAYFIELD

My name is John Mayfield, and I reside at 2090 Sierra Place, Ukiah, California 95482. I previously prepared a Verified Statement, tendered with the Trustee's Petition to Reopen, filed September 21, 2005, but it is unclear from the Board's Decision, served November 23, 2005, whether the Verified Statement was received as evidence.

As I noted in my earlier Verified Statement, I was the Chairman of the California Western Railroad, Inc. ("CWR"), when on August 9, 1996, it acquired the railroad properties, pursuant to the Notice of the Board in STB Finance Docket No. 33005, CWRR, Inc.—Acquisition and Operation Exemption—Mendocino Coast Railway, Inc., d/b/a California Western Railroad, served August 19, 1996, and I remained Chairman until December 3, 2002, when the CWR went into

bankruptcy. I, accordingly, am all too aware of what transpired on November 25, 1998, when the Northwestern Pacific Railroad ("NWP") ceased operating, as directed by Federal Railroad Administration Emergency Order No. 21.

CWR is a forty-mile railroad extending between Fort Bragg and Willits, California. Fort Bragg was the site of a lumber mill of the Georgia-Pacific Corporation, the principal shipper on the CWR's line. Before the shut-down of the NWP, it is my recollection that Georgia-Pacific Corporation on average tendered three carloads of lumber a day, or 60 carloads a month, for transportation by CWR. The Georgia-Pacific Corporation had approximately 80 cars assigned to handle its lumber shipments.

Willits, the eastern terminus of the CWR, was where CWR connected with the NWP and, through a connection Shelleville, CA, and the Union Pacific Railroad Company at Mare Island, CA, with the Nation's railroad system. Indeed, the Willits interchange with the NWP was the only way CWR could participate in the movement of the Georgia-Pacific Corporation's lumber shipments.

I do not recall just when Rail-Ways, Inc., became the contract operator of the NWP, but I know full well that Rail-Ways, Inc., was the contract operator of the NWP at the time that the Federal Railroad Administration entered Emergency Order No. 21. I know that to be a fact, because I time and again spoke with Mr. John Darling, who was the head of Rail-Ways, Inc., about what he proposed to do to permit CWR again to move the Georgia-Pacific Corporation's lumber shipments.

Since preparing my earlier Verified Statement, I have reviewed Mr. Darling's Verified Statement attached to the Defendant's Reply, filed October 11, 2005, and I respectfully disagree

with certain of his allegations. For example, the flooding which occurred in February 1998 may have washed out a segment of the NWP's Eel River division, north of Willits, it had little effect on the Willits-to-Shellville line. Indeed, Mr. Darling later in his Verified Statement acknowledges that he operated the Willits-to-Shellville line from May to November 1998.

At the time of the November 25, 1998, shut-down of the NWP, CWR had three loaded cars of lumber at Fort Bragg ready to be transported to Willits to be tendered to NWP for movement to points beyond. Three additional loaded cars of lumber were at Willits awaiting interchange to NWP to be hauled by it to Shellville for subsequent movement by the Union Pacific Railroad Company. I and others contacted NWP to get the cars moved from Willits to Shellville. Mr. Darling in his Verified Statement contends otherwise and claims that he and I did not speak until some point after October 22, 2001, the significance of which date I cannot imagine. I respectfully submit Mr. Darling's memory is flawed, and I and others made my concerns know to him in a timely fashion. Although I subsequently learned that he had promised the Federal Railroad Administration to effect the repairs and at no time indicated that he was unable to make the repairs for want of funds, Mr. Darling washed his hands of the whole thing. The loaded cars ready to be tendered for transportation by the NWP had to be unloaded and the lumber shipped by truck for transloading to the Union Pacific Railroad Company.

Mr. Darling in his Verified Statement says that, notwithstanding the entry of FRA Emergency Order No. 21, "every car from the California Western Railroad which had been interchanged to the Northwestern Pacific Railroad was transported to the point of interchange." Mr. Darling, however, doesn't dispute that, because of the shut-down of the NWP, it was impossible to interchange the three cars trapped in Willits and the three cars trapped in Fort

Bragg on November 25, 1998.

The personnel of the Fort Bragg lumber mill of Georgia-Pacific Corporation were concerned that Rail-Ways, Inc., had allowed the Willits-to-Shelleville line to deteriorate to the point that it was shut down by the Federal Railroad Administration's Emergency Order No. 21. It left the lumber mill with no alternative but to ship all of its output by truck, at appreciably greater expense, rendering its lumber less competitive in the Midwestern marketplace. They kept after CWR to try to get service restored on the NWP, and we, in turn, requested resumption of service.

A modicum of work was performed by Rail-Ways, Inc., enough to permit the return to the Union Pacific Railroad Company of the now empty cars which CWR was holding. Additionally, after I met with the Board of Directors of the NWP, Rail-Ways, Inc., did some work at Willits to enable CWR to turn its Skunk Train passenger excursion trains. That resulted in the partial relief from Emergency Order No. 21, approved by the Federal Railroad Administration on June 8, 1999.

I had several conversations with Mr. Darling and the Board of Directors of the NWP about repairing the Willits-to-Shelleville line sufficiently to permit the handling of the Georgia-Pacific Corporations lumber cars, but to no avail. The Fort Bragg lumber mill sough again to be able to ship its products by rail, and CWR was prepared to transport the carloads of the mill's lumber to Willits and to tender the traffic to the NWP. The Fort Bragg lumber mill was closed by Georgia-Pacific Corporation in September 2002, and I have no doubt its inability to ship by rail because of the disrepair of the NWP's Willits-to-Shelleville line was a contributing factor.

In turn, CWR's loss of the Georgia-Pacific Corporation's lumber business contributed to

its bankruptcy just a few months later, on December 3, 2002. As I already stated, before the November 25, 1998, shut-down of the NWP, we received on average 60 carloads of Georgia-Pacific Corporation lumber shipments. CWR's share of the revenue came to about \$500 per car. Thus, NWP's failure to maintain the interchange at Willits or to operate its Willits-to-Shellville line during the 22 months between December 3, 2000, which I am advised is the applicable statute of limitations date, and September 2002, when Georgia-Pacific Corporation shut its Fort Bragg lumber mill, cost CWR some \$660,000 of lost freight revenue. With an operating ratio of approximately 80, that represented a loss of \$132,000 net revenue. It is my understanding that that is the amount which the Trustee is seeking to recover as damages for the Defendant's breach of its statutory obligations.

I declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of the estate of the California Western Railroad. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Ukiah, California, this day of December 2005.

John Mayfield

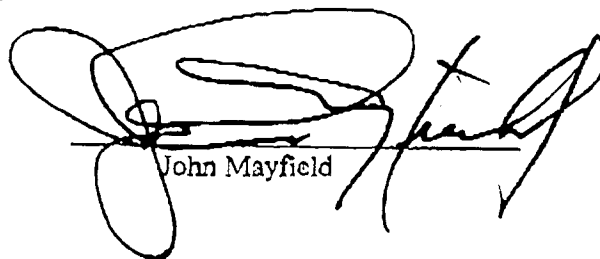
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Dated at Ukiah, California, this ^{16th} day of December 2005.



John Mayfield

-5-

ATTACHMENT D

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY
d/b/a NORTHWESTERN PACIFIC RAILROAD

VERIFIED STATEMENT
OF
GARY D. MILLIMAN

My name is Gary D. Milliman, and I reside at 246201 Tiara Court, Tehachapi, California 93561. I previously prepared a Verified Statement, tendered with the Trustee's Petition to Reopen, filed September 21, 2005, but it is unclear from the Board's Decision, served November 23, 2005, whether the Verified Statement of was received as evidence.

As I stated in my earlier Verified Statement, between the summer of 1996, when the ownership of the ownership of its properties changed hands, and early 2000. I served as the President and CEO of the California Western Railroad ("CWR"). I held that position on November 25, 1998, when the Northwestern Pacific Railroad ("NWP") ceased operating, pursuant to Federal Railroad Administration Emergency Order No. 21.

Mr. John Mayfield, the former Chairman of the CWR, in his Verified Statement describes the CWR, the lumber shipments it handled for the Fort Bragg mill of the Georgia-Pacific Corporation ("GPC") and the railroad's dependence on the interchange with the NWP at Willits, California, as the only means for the CWR to connect with the general railroad system of the country, and I shall not repeat his observations.

I recall distinctly that, when the NWP ceased operating, we had several carloads of lumber sitting at Fort Bragg because we had nowhere to move them, and we had additional carloads of lumber at Willits which we wanted to interchange to the NWP for movement to Shelleville and the connection with the California Northern Railroad Company and, hence, the Union Pacific Railroad Company.

I contacted Mr. John Darling of Rail-Ways, Inc., which at the time was the contract operator of the NWP, to see what could be done about repairing the Willits-to-Shelleville railroad line and restoring service on it. Since preparing my earlier Verified Statement, I have reviewed Mr. Darling's Verified Statement attached to the Defendant's Reply, filed October 11, 2005, and I respectfully disagree with certain of his allegations.

Mr. Mayfield and I attended several Board meetings of the North Coast Railroad Authority ("NCRA") to advise them that GPC was hurting because of its inability to ship its lumber by rail, and CWR was hurting because we were unable to handle any freight shipments. We asked the NCRA Board to authorize the repair of the line and even offered to make CWR personnel available to assist with the maintenance of way work. Mr. Darling in his Verified Statement appears to fault CWR for not making its personnel available for the repair of signals on the Willits-to-Shellville line, but that our personnel were hardly competent to undertake such

a technical undertaking.

As he discusses in his Verified Statement, Mr. Darling patched up the Willits-to-Shellville line sufficiently to permit the return to the UP of the cars which were trapped on the CWR and which, in the meantime, had been unloaded for the lumber to be trucked.

Moreover, the NCRA Board directed Mr. Darling to repair the tracks at Willits sufficiently to permit us to turn our Skunk Train passenger excursion trains.

But neither Mr. Darling nor the NCRA Board responded to our repeated requests that the Willits-to-Shellevill railroad line be repaired so that the GPC lumber again could be shipped by rail. We didn't think that the needed repairs were all that extensive – certainly nothing like what was required for the restoration of the Eel River segment north of Willits – and, from what we read in the newspapers, we had reason to believe that NCRA had received sufficient Federal disaster assistance and other state funds to permit the work to be performed..

At the time service was discontinued, we were actively working with GPC and the Louisiana Pacific Corporation on plans to develop increased lumber freight business from Fort Bragg to NWP. We were also engaged in plans for expanding passenger operations on the NWP to enhance the CWR. We had made significant investments in these business planning efforts.

The inability to interchange traffic at Willits and to have it moved over the Willits-to-Shellville line cost CWR dearly. Before the November 225, 1998, shut-down of the NWP, CWR on average received 60 carloads of Georgia-Pacific Corporation lumber shipments, and our share of the revenue came to about \$500 per car. Accordingly, during the 22 months between December 3, 2000, which I am advised is the applicable statute of limitations date, and September 2002, when Georgia-Pacific Corporation shut its Fort Bragg lumber mill, denied

CWR some \$660,000 of lost freight revenue. We then enjoyed an operating ratio of approximately 80, meaning that CWR sustained a loss of \$132,000 of net operating revenue. I understand that that is the amount which the Trustee is seeking to recover as damages for Defendant's breach of its statutory obligations.

The eventual bankruptcy of the CWR was directly related to the loss of the freight service connection with NWP, lost business opportunities resulting from the termination of operations on the NWP and the lack of access to the Southern Pacific interconnection for points beyond.

VERIFICATION

I, Gary D. Milliman, the former President and CEO of the California Western Railroad, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of the estate of the California Western Railroad. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Tehacahpi, CA, this ____ day of December 2005.

Gary D. Milliman


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The eventual bankruptcy of the CWR was directly related to the loss of the freight service connection with NWP, lost business opportunities resulting from the termination of operations on the NWP and the lack of access to the Southern Pacific interconnection for points beyond.

VERIFICATION

I, Gary D. Milliman, the former President and CEO of the California Western Railroad, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of the estate of the California Western Railroad. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Tehachapi, CA, this 3rd day of December 2005.



Gary D. Milliman

ATTACHMENT E

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY
d/b/a NORTHWESTERN PACIFIC RAILROAD

VERIFIED STATEMENT
OF
RICK CECIL

My name is Rick Cecil, and I reside at 5516 Roberts Drive, Plano, Texas 75093-7629.

I am a former Vice President of Kyle Railways, Inc., and its successor, States Rail LLC, and, as such, I am well familiar with the Debtor, California Western Railroad, Inc.

California Western Railroad had been a proprietary railroad of the Georgia-Pacific Corporation, connecting its lumber mill at Fort Bragg, California, with the Defendant, North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad. It was established as a common carrier railroad, pursuant to the Decision of the Interstate Commerce Commission in Finance Docket No. 27442, Georgia-Pacific Corporation—Control—California Western Railroad, served October 4, 1973.

In July 1976 Kyle Railways, Inc., entered into an 18-month operating agreement to run the California Western Railroad for Georgia-Pacific Corporation. Towards the end of its term, Kyle Railways, Inc., through its subsidiary, Mendocino Coast Railway, Inc., entered into a lease, with option to purchase, the railroad, approved by Decision of the Interstate Commerce Commission in Finance Docket No. 28256, Mendocino Coast Railway, Inc.—Lease and Operate—California Western Railroad, served November 7, 1977, modified, December 8, 1977, August 18, 1978.

Shortly out of college, I was sent by Kyle Railways, Inc., to Fort Bragg in July 1976, when we began operating the California Western Railroad, to acquaint myself with both its freight and passenger business and subsequently to superintend the railroad's operations. We did a fairly substantial amount of freight business on the railroad at that time. As I recall, we handled 20 to 30 carloads of lumber in three trains a week. At the time, we received about \$400 per car, and the gross revenue on the lumber shipments we hauled for Georgia-Pacific Corporation came to about \$1 to \$1.25 million annually.

I left Fort Bragg, as I recall, in November 1979 to assume a managerial position with Kyle Railways, Inc, then based in San Francisco and thereafter with StatesRail LLC, based in Dallas. I, however, continued to keep close tabs on what the California Western Railroad was doing.

Unhappily, business declined on the railroad, and by the time Kyle Railways, Inc., sold the California Western to Mr. John Mayfield and his group of investors, pursuant to the Board's Decision in Finance Docket No. 33005, CWRR, Inc.—Acquisition and Operation Exemption—Mendocino Coast Railway, Inc., d/b/a California Western Railroad, served August

19, 1996, the railroad handled between 18 and 22 carloads of Georgia-Pacific Company lumber a week. The rate by then had been increased to about \$500 per car, and the gross revenue earned on the lumber shipments was about \$.5 a year. We managed to keep our operating costs down on the California Western Railroad, and the Georgia-Pacific Corporation lumber shipments continued to be profitable.

I declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Plano, Texas, this day of November 2005.

Rick Cecil

ATTACHMENT F

ATTACHMENT F

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY
d/b/a NORTHWESTERN PACIFIC RAILROAD

VERIFIED STATEMENT
OF
ROBERT HANDEGARD

My name is Robert Handegard, and I am the General Sales Manager - Western Lumber of the Georgia-Pacific Corporation with offices at 15500 SW 72nd Avenue (#200), Portland, OR 97224

I was the Sales Manager of the Fort Bragg, California, lumber mill of the Georgia-Pacific Corporation at the time of the shut-down of the Northwestern Pacific Railroad.

I do not have any records of the business we then were doing, but, to the best of my recollection, we then were shipping approximately 700 carloads of lumber a year via the California Western Railroad.

I declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing and that its assertions are true and correct to the best of my knowledge,


information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Georgia-Pacific Corporation. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Portland, OR, this _____ day of December 2005.

Robert Handegard

information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Georgia-Pacific Corporation. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Portland, OR, this 6th day of December 2005.


Robert Handegard

ATTACHMENT G

NORTH COAST RAILROAD AUTHORITY MEETING
BOARD OF DIRECTORS
NOVEMBER 18, 1998
CITY HALL, COUNCIL CHAMBERS
EUREKA, CA. 95501

REGULAR MEETING

- A. CALL TO ORDER:
The meeting was called to order at 10:00 a.m. by
Chairperson Allan Hemphill
- B. ROLL CALL:
Directors present: Chairperson Allan Hemphill, Robert
Jehn, Dennis Wood, David Nelson, John Stokes, Jack
McKellar, Ruth Rockefeller (10:03) David Nelson (10:04).
- C. RECOGNITIONS:
i. Thank the City of Eureka for hosting the NCRA meeting.
2. The Committee thanks Dir. Ruth Rockefeller
former chairman, for her dedication, and passion to
the railroad. Ruth was presented with a plaque.
- D. MINUTES:
Approval of minutes of October 21, 1998 meeting. Robert Jean
wanted indication of the vote 9-0 to approve the consent
calendar. Dir. Jehn moves approval, no opposition.
- E. AGENDA APPROVAL: Dir. Jehn approved, seconded by
Dir. McKellar, no opposition.
- F. ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION:
The board gave direction to legal counsel on several
matters, but no action was taken.
- G. CONSENT AGENDA
1. Requesting approval of expenditures totaling \$441,000.
\$101,000 for Janitorial work for the Willits office.
\$101,000 for title work done on the Cloverdale bypass.
 2. Request approval of contract with Wells Fargo Bank
for deposit of monies.
 3. Ratification of grant application with Fish & Game.
Bill Burton agreed to prepare the grant application and
it was filed on November 5th. The Attorney General was
sent a copy.

The claims are related to crossing arms. The board should take into consideration problems with crossing signals. This is the third claim this year. Crossing arms coming down on vehicles as they are going through the intersection. \$4,000 has been paid to quality signals for monies owed.

John Darling, of Rail-Ways Inc. reported the replaced mechanism at Route 37. There are several hundred thousand dollars in deferred maintenance on the signals that needs to be funded. Crossing signals are 10 to 15 years old and parts are no longer attainable.

There is a program in Sonoma County to replace it crossing next year. There is still a problem on Highway 112 with the signal. When NORA gets reimbursement from storm damage, they can issue a rehabilitation program for signals to comply with TPA, costs could be \$90,000 to \$100,000. There are section 130 funds for highway crossing maintenance. Rail-ways is preparing 90-99 submission for December. Funds will not be available until May. Vote taken, motion by Mr. Stokes, second by Mr. Rockefeller, approved.

H. CONDUCT OF BUSINESS

Consideration of Establishment of NC24 Rotation Office.

Ruth Rockefeller has been managing the office in Williams since July. The board recommends moving the offices back to Europe now there is a full time staff. There will be a new executive director the first of the year. Normal action is required by the Board of Directors to Secretary of States office, for a Director to address what is now in Williams.

official mailing address, which is:
Dir. Wood moved, seconded, vote 8-0.

Status of Operating Agreement with Rail-Ways, Inc.

WARA board on November 16, 1986 approved railways agreement. Approval is contingent upon consent of Union Pacific to the extension of general indemnity payment to coast of way with Union Pacific. The railway agreement is in place, the deadline is December 1st. Once the railway agreement was viewed as an advance and the railway board to North Coast contractors.

FEMA teams have been in the Red River canyon for the last two weeks. The audit is complete and there will be a meeting with staff tomorrow. FEMA will not release any funds until the audit is complete.

John Darling stated there is a level of commitment by FEMA and other public agencies to operate the railroad. We have been telling the shippers we will continue to operate under the interim agreement. Railways has submitted there very detailed invoice to FEMA for the southern end, and northern end. As long as progress continues Railways Inc. will continue to support the railroad, NCRX and Chicago. Motion by Robert Geln to continue interim agreement. Vote taken, motion carried, vote 8-0.

8. Discussion of 1999 Legislative Agenda

Chris Neart requested the board focus on the 1999 agenda. Assembly of staff and legislatures at state level at the meeting measure against federal level. We need to address the landslide issue. Draft recommendation at next meeting.

I. PUBLIC COMMENTS

Don Leonard of NCRX, welcomes the board to Eureka and thanks Dennis Wood for the information about meetings for the communications relations committee. They support daily local passenger excursions as the number one priority, number 1 tourist attraction.

Kaye Strickland, chair of citizens for development support for the railroad, favored reestablishing office in Eureka. They will do what they can to support the railroad.

Fred Charuchal supportive of railroad for the last thirteen years. Mr. Charuchal has done some advertising in support of the railroad, to the libraries, post offices and colleges.

7. LIAISON REPORT

9. Cal Trans Liaison Committee-Allan Hamphill

Cal Trans working to release FEMA funds. There is a meeting scheduled for November 30, 1996 with Deputy Director Hester, District one staff, and MRS. and various government jurisdictions who are invited to collaborate on future of railroad.

Thank you to EDC David Gavrich and staff who have provided support and donated 100 hours for the railroad business plan, and help on the legislative front.

10. Ad Hoc Audit Committee Report-Dennis Wood, Robert Zehn

The FEMA audit is complete after two years. Goal is for a outside audit opinion 1998-1999 independent audit.

11. FEMA/CES, FEMA AUDIT

This item was heard under J.10 By Russ Mustola

Mr. Mustola, from CPA Accounting Services, reviewed the progress of the new hardware and software. Very successful extracting payroll, and accounting. Payroll, job costs and storm damage from the old system.

7. LIAISON REPORT

11. WPPSA Report-John Stokes/Allan Hamphill

Railways Operating Agreement has received the approval of the WPPSA board, subject to gaining the confirmation of the indemnity agreement from UP.

12. Legislation-David Nelson

Covered in earlier discussion

13. Passenger-Robert John

Meeting of the passenger committee on November 10, 1996, at 12:00pm. in Cloverdale. Present were: Carl Myers, Angela Peterson, and Robert John.

There is a vacancy on the passenger committee. If there are any board members interested, John Ghoran volunteered and was appointed to the passenger committee. Carl from California Redwood Coast Company requesting some amendments to existing agreements, look for the next agenda.

Robert Jahn spoke at the Santa Rosa City Vision project they are trying to reconnect the downtown which was bypassed by the freeway, this will make access to the depot easier. Mr. Jahn spoke about the vision of passenger excursion, commuter rail and freight with the opening of Humboldt Bay as a deep water port, providing a double stack container service, potentially out of Santa Rosa.

Measure C failed in Sonoma County and Measure B failed in Marin County which were sales tax measures to provide revenues for transportation plans. Which included 200 million in commuter rail, supervisor Sale has asked for a proposal and will make it back to Sonoma County to review at their next board meeting. To be put on the ballot for June of 1999.

The advisory measures did pass and it is clear the public did want passenger rail. The problem is how to pay for it and what the likely bond the district would be invested.

14. Cities-Jack McFeller

Mr. McFeller thanks the Bureau City Council for the facilities.

15. Concordator's Report-Rail-Ways, Inc. John Dalling

Traffic has been growing Concordator has been off by 10 200 carloads. Rail-ways has been breaking even on a cash basis, and looking at other railroads for additional revenue. There are problems with the connection in Willits, California western being able provide to provide freight service with Conrail. Pacific there are problems with bridge vandalism, and stealing copper, and it has been reported by Quality Signals and reported to County Sheriff and the F.B.I.

This week comprehensive training has been completed for employees required to take hazardous commodity training classes were held in Willits andureka. We have full compliance with FTA, completed engineers certification in the next few days. The maintenance training program will be in full compliance by the end of the year.

Cal Western has been originating traffic from Tom Bragg to Windsor on the NW, without tariff endorsement. This has lead to confusion to who is responsible for the revenues. Railways can only be responsible for the rates that move during our contract. That leaves another \$12,000.00 at issue. They will have to come to the board for a resolution.

There are some other problems we need to address with regard to equipment issue. There is a lack of documentation. Some events have preceded the present disposition of the equipment.

The problem with the reload business in Willits is the discrimination in trunk line carrier rates. as the U.P. rates beyond Willits is at a disadvantage to lumber shippers in comparison to Redding. The Union Pacific has not been willing to negotiate the rates leaving the outstanding car receivables from UIC. There are three to five reload cars per day. This has the capacity to double that amount with the same disadvantage over Redding it puts us at a disadvantage in new offered to waive the surcharges to shipper for the cars or more a month.

16. Executive Director Search-Robert John

At the meeting on September 23 1998, the board approved a job description and a recruiting plan for a permanent executive director. The item was contained from the October 21st, meeting to today pending the approval of our interim budget by CFC. Robert John recommended to the board to select Hughes Perry & Associates to begin this to 120 day process.

We need a governmental agency to help us through the transition period. The comments from CFC staff are they consider it a interim solution. Mr. Robert John suggests not voting on material today. The item is continued until the December meeting because we need to take formal action today.

K. DISCUSSION ITEMS

17. Presentation by John Azaro regarding communication plan.
Director John Azaro is absent, continuance of communication plan to a future meeting.

18. Preparation of Budget for January CTC Meeting

Previously discussed by Russ Mustola

The preparation of the budget for the January CTC is to incorporate the additional administrative functions that we are going to cover plus operating accounts receivable, other obligations, judgments, and getting some of the operating accounts payable paid to vendors. The deadline to submission is mid to late December to CTC Staff. Confirm the time line Monday with Cal Trans. He presented a interim document for \$240,000 to carry the organization through until Spring. A more detailed budget that will earmark specific amounts, and in the long term specific amounts for next year. This would be for the next meeting.

L. STAFF REPORTS

19. FEMA/OES, FEMA Audit

This item was heard under J 10.

20. Environmental Compliance Issues: NCEA was on the agenda for the October 22, 1998 North Coast Water Quality Control Board in Santa Rosa

Chris Neary reported he attended the October 22, 1998 meeting at the North Coast Water Quality Control Board in Santa Rosa to report on the NCEA progress. NCEA questioned the plan by Railways. Railways has not in compliance with the monthly reports as required by the agreement made last May or June.

The board met in closed session concerning NCEA and decided to refer all past items to the Attorney General's office so they can speak as a "warning house" to the various agencies for the past compliance issues. The board staff, they were pleased with the progress of the cleanup from the Williamson.

The negotiation committee for NTA and the negotiation committee for Vandoring Transit authorities met. The Board can expect a new proposal to come in by the next meeting from NTA on a potential purchase agreement.

The funds have been distributed as the Board indicated at its October meeting. We were able to distribute \$70,000. 30% of DSA's are paid, and there are a little more than fifty percent outstanding. We made payments on accounts. Chris said he will let FINE know the outstanding delay has increased our costs. There have been interest expenses incurred since May of 1967. The next proposal to distribute 10% of the funds to the contractors. There is \$1,000.00 left in the account. Before we made the distribution we notified the contractors of our methodology and asked for their comments. None of the was instrumental in preparing the distribution formula to the contractors.

[illegible]

Our excess funds are \$90,000 these funds are dedicated to the Q Fund repayment and we will hold them in the court fund bearing interest until the same transfers to a receivable account.

Along with the \$52,000 that is in our trust account we will be transferring \$140,000 to the Q-fund in December, which we should mention when we appear before the CTC in January so they are aware we are making progress and satisfying the Q-fund requirements.

N. OTHER MATTERS FROM BOARD MEMBERS

Chairman Allan Kempshall is pleased the board is making progress and wants the board to focus on the public policy issues of the railroad. He has individual directors and our friends launch the public policy discussion in the strongest terms. We can't win unless we stay focused on the public policy issues of the railroad.

Bill Graham the project manager for SBC announced they have a waste by rail trailer from the East Coast that they are using in the Bay Area as a prototype. It is being tested in waste handling conditions. Other rail equipment is in development to handle waste. We would like to test on the railroad next year.

The transfer station here is moving ahead. The building is about three weeks away from completion. We look forward to working with the railroad in the long term. We enjoy working with you.

O. ANNOUNCEMENT OF NEXT MEETING

The next meeting is the third Wednesday of the month December 16th. Robert Jenn will try to use the Cloverdale Council Chambers for the meeting.

P. CLOSED SESSION

ATTACHMENT H

EMPLOYER STATUS DETERMINATION
Rail-Ways, Inc.

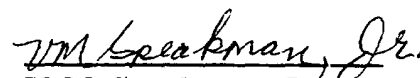
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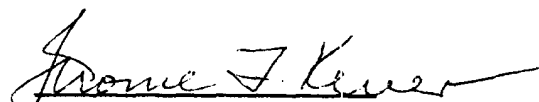
This is a determination of the Railroad Retirement Board concerning the status of Rail-Ways, Inc. (RWI) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA).

Information regarding RWI was provided by Mr. John A. Darling, CEO and President of RWI. According to Mr. Darling, RWI began rail operations and first compensated its employees on February 23, 1998. In 1998, RWI entered into a contract agreement with North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad (NPR) (B.A. No. 3783). According to the agreement and Mr. Darling, RWI provides services on 170.5 miles of rail line with terminal points located in Schellville, Petaluma, and Willits, California. RWI, as NPR's agent, handles approximately 350 carloads of freight each month. Mr. Darling further stated that RWI also provides maintenance and construction services to NPR. Mr. Darling stated that RWI interchanges with Union Pacific Corporation (B.A. No. 1713). Mr. Darling also stated that in addition to its services to NPR, RWI provides economic, marketing, engineering, and other consulting services to Class I railroads, railroad shippers, and other railroad professionals. Recent clients have included Norfolk Southern Corporation (B.A. No. 9408), Kansas City Southern Railway (B.A. No. 1806), Gateway Western Railroad (B.A. No. 3771).

The evidence of record establishes that RWI is a carrier operating in interstate commerce. Accordingly, it is determined that Rail-Ways, Inc. became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act effective February 23, 1998, the date on which it began railroad operations and its employees were first compensated.


Cheryl T. Thomas



V. M. Speakman, Jr.


Jerome F. Kever

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing Opening Statement upon North Coast Railroad Authority, d/b/a Northwest Pacific Railroad, by sending copies thereof via UPS Second Day Air to their counsel, Christopher J. Neary, Esq., and William A. Mullins, Esq..

Dated at Washington, DC, this 30th day of December 2005.


Fritz R. Kahn